

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
11-EDC-5059**

## FINAL DECISION ORDER OF DISMISSAL

1. The Petitioners filed a Due Process Petition in the Office of Administrative Hearings (OAH) citing dispute with the evaluation and placement of *Student*, a decision regarding a manifestation determination for *Student*, and *Student*'s denial of a free, appropriate, public education. That Petition was given the OAH number 11 EDC 4970. By Order of the Undersigned the dispute regarding a manifestation determination review decision was separated out and assigned the above cited number (11 EDC 5059).
2. After filing of Respondent's Motion, Petitioners filed their Consent to Removal from the Court's Expedited Hearing Calendar.
3. Respondent contends that *Student* is not in a disciplinary placement and there has been no manifestation determination review. Respondent contends that the allegations in the Petition do not merit expedited review.
4. Petitioners assert that in response to Respondent's pattern of removals of *Student* without a manifestation determination, Petitioners unilaterally placed *Student* in a private placement.
5. Petitioners have no objection for removal of the hearing from the expedited hearing calendar. Petitioners state that "the expedited hearing and remedies available pursuant to it are no longer required."

### **FINAL DECISION**

Based on the foregoing, disposition of the above case by dismissal with prejudice in accord with Chapter 3 of Title 26 of the North Carolina Administrative Code, and N.C. GEN. STAT. § 150B-33 and N.C. GEN. STAT. § 1A-1, Rule 41 of the North Carolina Rules of Civil Procedure, as well as the Federal Regulations relating to IDEA, is proper and lawful. Issues surrounding dispute with manifestation determination matters will be addressed in 11 EDC 4970.

### **NOTICE**

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights.

Pursuant to the provisions of NORTH CAROLINA GENERAL STATUTES Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. N.C. GEN. STAT. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Pursuant to N.C. GEN. STAT. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal.

In the alternative, any person aggrieved by the findings and decision of this Final Decision, Order of Dismissal may institute a civil action in the appropriate district court of the United States as provided in Title 20 of the United States Code, Chapter 33, Subchapter II, Section 1415 (20 USC 1415). Procedures and time frames regarding appeal into the appropriate United States district court are in accordance with the aforementioned Code cite and other applicable federal statutes and regulations. A copy of the filing with the federal district court should be sent to the Exceptional Children Division, North Carolina Department of Public Instruction, Raleigh, North Carolina so that the records of this case can be forwarded to the court.

Ordered on this 16<sup>th</sup> day of May, 2011.

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Augustus B. Elkins II  
Administrative Law Judge